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EXAMINER CHAWAN, SHEELA C				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,874

Applicant(s)VAN DE SLUIS, BARTEL
MARINUS**Examiner**

SHEELA C. CHAWAN

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/18/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Preliminary Amendment

1. Preliminary amendment filed on 5/18/06 has been entered.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 5/18/06, the information disclosure statement is being considered by the examiner.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: page 3 of specification line 20, " the target person's face 22a and also see page 3, line 28, fig 2, stored image 22a may be displayed as an icon 22b on a screen display 45 of an electronic system 30, e.g., a mobile telephone 50" no where to be seen in the fig 1 and fig 2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9-16 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent¹ and recent Federal Circuit decisions² indicate that a statutory “process” under 35 U.S.C. 101 must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claims recite a series of steps or acts to be performed, the claims neither transform underlying subject matter nor are positively tied to another statutory category that accomplishes the claimed method steps, and therefore does not qualify as a statutory process. The recited steps of “obtaining an image including an image of a target person, processing said obtaining image including recognizing a facial feature associated with said target person and extracting that target person’s facial portion from said image, displaying said extracted target person’s facial portion in an electronic system” neither transform underlying subject matter nor positively tie to a machine that accomplished the claimed method steps. In order for process to be “tied” to a machine, the structure of a machine should be positively recited in a step or steps significant to the basic inventive concept,

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

² *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

and NOT just in association with statements or intended use or purpose, insignificant pre or post solution explicitly, or implicitly.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claim(s) 17- 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 17- 22 defines a **"computer program product" for representing a user in an electronic system.** embodying functional descriptive material (i.e., a computer program or computer executable code). However, the claim does not define a "computer-readable medium or

computer-readable memory” and is thus non-statutory for that reason (i.e., “When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized” – Guidelines Annex IV). The scope of the presently claimed invention encompasses products that are not necessarily computer readable, and thus NOT able to impart any functionality of the recited program. The examiner suggests amending the claim(s) to embody the program on “computer-readable medium” or equivalent; assuming the specification does NOT define the computer readable medium as a “signal”, “carrier wave”, or “transmission medium” which are deemed non-statutory (refer to “note” below). Any amendment to the claim should be commensurate with its corresponding disclosure.

Note:

“A transitory, propagating signal ... is not a “process, machine, manufacture, or composition of matter.” Those four categories define the explicit scope and reach of subject matter patentable under 35 U.S.C. § 101; thus, such a signal cannot be patentable subject matter.” (In re Nuijten, 84 USPQ2d 1495 (Fed. Cir. 2007)). Should the full scope of the claim as properly read in light of the disclosure encompass non-statutory subject matter such as a “signal”, the claim as a whole would be non-statutory. Should the applicant’s specification define or exemplify the computer readable medium or memory (or whatever language applicant chooses to recite a computer readable medium equivalent) as statutory tangible products such as a hard drive, ROM, RAM,

etc, **as well as** a non-statutory entity such as a "signal", "carrier wave", or "transmission medium", the examiner suggests amending the claim to include the disclosed tangible computer readable storage media, while at the same time excluding the intangible transitory media such as signals, carrier waves, etc.

Merely reciting functional descriptive material as residing on a tangible medium is not sufficient. If the scope of the claimed medium covers media other than "computer readable" media (e.g., "a tangible media", a "machine-readable media", etc.), the claim remains non-statutory. The full scope of the claimed media (regardless of what words applicant chooses) should not fall outside that of a computer readable medium.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- 3, 9 -11, and 17-19, are rejected under 35 U.S.C. 102(b) as being anticipated by Lu et al., (US. 5,771,307).

As to claim 1, Lu discloses a system (10) for representing a user in an electronic system (fig 3) (30) comprising:

means (15) for obtaining an image (12) including an image of a target person (fig 3, element 32 and 34 are cameras, capturing images item 54, 56 and 58 column 9, lines 5-7, 59- 65) (22);

means (18,20) for processing said obtained image, said means for recognizing a facial feature associated with said target person (22) in said image and extracting that target person's facial portion (22A) from said image (fig 3, element 18, video equipment module where images are periodically captured by the cameras 32 and 34 . These images are digitized and multiplexed by a multiplexer and digitizer 50 as shown in fig 3, column 9, lines 41-49, 59- 65, column 10, lines 4- 21) ;

means (45) for displaying said extracted target person's facial portion in an electronic system display device to represent that target person's connection to said electronic system (fig 3, element 18, video equipment module where images are periodically captured by the cameras 32 and 34 . These images are digitized and multiplexed by a multiplexer and digitizer 50 as shown in fig 3, elements 72C, 54, 58, 66, 69, 68 , 70 and 72, column 9, lines 41-49, 59- 65, column 10, lines 4- 21, column 14, lines 37- 51) (30).

As to claim 2, Lu discloses the system of claim 1, wherein the means for obtaining an image includes an image capture device such as a camera (15) adapted to generate a still image or full motion image sequence(fig 3, item 69, column 9, lines 30-33, column 10, lines 4- 21).

As to claim 3, Lu discloses the system of claim 1, wherein the means for processing includes an image recognition device (fig 5, tracking /recognition device, and element 108) for receiving a digital stream (column 9, lines 5- 7, 30- 33) (18) embodying said image and applying facial recognition technique to extract a target person's facial portion image (column 10, lines 4- 30).

Regarding claim 9, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 1.

Regarding claim 10, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 2.

Regarding claim 11, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 3.

Regarding claim 19, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 3.

Regarding claim 18, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 2.

Regarding claim 17, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 - 8, 12-16 and 20 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu et al., (US. 5,771,307), as applied to the claims 1- 3, 9 -11, 17-19 above and further in view of Obrador (US.6,585,521 B1).

Regarding claim 4, Lu discloses a face recognition system and method for identifying shoppers at multiple locations within a retail store and for correlating those shoppers with their purchase and with their responses to advertisements. Lu is silent about wherein a time for taking an image from said capture device is determinable at a moment when a target person (22) is smiling or when a target person is gazing towards an image capture device.

Obrador video an imaging system, and in particular, to video indexing system. The system comprises of: wherein a time for taking an image from said capture device is determinable at a moment when a target person (22) is smiling or when a target person is gazing towards a image capture device (column 2, lines 20- 36, , column 3, lines 36- 45, column 5, lines 40- 48, column 7, lines 22- 45) .

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Lu to include an image from said capture device is determinable at a moment when a target person (22) is smiling or when a target person is gazing towards a image capture device. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Lu by the teaching of Obrador in order to determine that video indexing based on viewer's behavior and emotion feedback is transparent to the user, and may generate custom indexing to a

particular user, affording a user- friendly hierarchy for video browsing (as suggested by Obrador at column 1, lines 54- 57).

As to claim 5, Obrador discloses the system of claim 3, wherein said displaying means utilizes said extracted target person's facial portion (22a) as an icon (22b) for representing said target person via a display interface (45) associated with said electronic system(column 5, lines 34- 48) (30).

As to claim 6, Lu discloses the system of claim 5, wherein said icon (22b) including said extracted target person's facial portion (22a) is immediately or subsequently imported to said electronic system (30) (fig 3, element 18, video equipment module where images are periodically captured by the cameras 32 and 34 . These images are digitized and multiplexed by a multiplexer and digitizer 50 as shown in fig 3, elements 72C, 54, 58, 66, 69, 68 , 70 and 72, column 9, lines 41-49, 59- 65, column 10, lines 4- 21, column 14, lines 37- 51).

As to claim 7, Lu discloses the system of claim 2, further comprising memory storage device (25) for storing said extracted target person's facial portion image (22a), in addition to contextual data associated with said image (column 4, lines 64- 67, column 12, lines 11- 20, column 14, lines 37- 64) .

As to claim 8, Lu discloses the system of claim 6, wherein said contextual data includes meta data including time, place, and image capture device implemented(column 4, lines 64- 67, column 12, lines 11- 20, column 14, lines 37- 64) .

Regarding claim 12, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 4.

Regarding claim 13, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 5.

Regarding claim 14, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 6.

Regarding claim 15, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 7.

Regarding claim 16, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 8.

Regarding claim 20, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 4.

Regarding claim 21, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 5.

Regarding claim 22, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 6.

Regarding claim 23, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 7.

Regarding claim 24, it is interpreted and thus rejected for the same reasons as applied above in the rejection of claim 8.

Other prior art cited

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lu et al., (US. 5,432,864) discloses identification card verification system.

Poggio et al., (US.5,774,129) discloses image analysis and synthesis networks using shape and texture information.

White et al., (US. 2004/0120009 A1) discloses method for generating an image of a detected subject.

Davis et al., (US.2003/0001846 A1) discloses automatic personalized media creation system.

Cumbers (US.6,142,876) discloses player tracking and identification system.

Contact Information

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEELA C. CHAWAN whose telephone number is (571)272-7446. The examiner can normally be reached on 7.30- 5.00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Werner can be reached on 571-272-7401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)? If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sheela C Chawan/

3/25/09

Primary Examiner, Art Unit 2624

